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Animal Protection in Hungary: A Multilayer System Based on an Administrative Approach*

Ochrona zwierząt na Węgrzech. Wielopoziomowy system oparty na podejściu administracyjnym

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ABSTRACT

Animal protection has a long tradition in the Hungarian legal system. It can be interpreted as a multi-layer model, but the major approach of animal protection has an administrative nature. Originally, animal protection was interpreted as protecting farm animals as resources. Even though new layers have been evolved, the agricultural-administrative approach remained. The second layer is based on the protection of health and healthy nature. Animals are even protected as part of the natural environment and ecosystem and their protection is part of securing the biodiversity in Hungary. Although animal cruelty is a criminal offense in Hungary, the penal law approach is consistent with administrative law as it is based on the institutional protection of the fundamental right to health and a healthy environment. The law acknowledges that animals are capable of feeling, of suffering. However, animal protection stems from the state's objective – subjectless – duty to protect the environment and humans' living conditions. Its ultimate aim is to protect humans.

Keywords: animal protection; administrative law; biodiversity; right to health and healthy environment; legal system; Hungary

INTRODUCTION

Animal protection has a long tradition in legal regulation. Animals were important assets and sources of human life – as food and – especially before the modern economies, but even during it – as working tools. However, it was clear that they are creatures, who can feel, but traditionally they were viewed differently than humans.[1] This traditional approach is mirrored by the thoughts of St. Thomas Aquinas, who stated that animals are not direct objects of moral concern, but cruelty against them is forbidden because cruelty against an animal could result in cruelty against human beings.[2] We would like to examine the transformation of this traditional approach by the analysis of the Hungarian regulation on animal protection.

In our paper, the animal protection measures of the Hungarian system are analysed from a legal point of view, comparing the dogmatic foundations and empirical experience of these actions. The starting point of our research is that the framework of these actions is provided by the conditions and demands based on the rule of law administration. In our analysis, not only administrative regulations, but even the regulation of the penal law is reviewed.

For reasons of length, this paper should not be intended to provide a comprehensive answer to all the dogmatic problems of animal protection law but is limited

[1] See M. Łuszczyńska, *The Issue of Environmental Protection in the Doctrine of the Catholic Church*, "Studia Iuridica lublinensia" 2020, vol. 29(4), p. 168.

[2] See B. Rollin, *Animal Ethics and the Law*, "Michigan Law Review First Impressions" 2008, vol. 143, p. 144.

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to an overview of the layers of the Hungarian legal regulation.[3] In conclusion, we summarise the possible approaches to the fundamental rights status of animals and how it is reflected in animal protection. We try to outline a kind of problem map that can serve as a basis for further research in legal dogmatics and empirical methodology.

THE TRADITIONAL APPROACH: ANIMALS AS OBJECTS

Traditionally, animals are interpreted by legal regulations as objects. Even in Roman law, animals were considered objects.[4] In Hungarian law, the animals have been traditionally important position among the assets.[5] As a remnant of the nomadic era in the traditional Hungarian law, the herd of horses (at least 50 horses) was considered as real estate.[6] During the Enlightenment, as part of the evolution of civil (non-feudal) property, the administrative regulations on animal ownership was evolved. Thus in 1794, an official certificate of the property of draft animals was introduced by a decree.[7]

The traditional regulation in Hungarian was based on that approach: animals are objects and important assets. They are considered as food and traditionally as working tools. The wild animals were interpreted as assets, as well. In Hungarian law, the ownership of the wild animals was interpreted as *regalia minora*, and they were linked to the ownership of the hunting areas.[8] These assets should be protected even by administrative law, therefore originally administrative law had a regulation on defending these animals as objects of the property.

The regulation on food safety has been transformed during the 20th and 21st centuries which was based on the evolvement of the food industry and the transformation of agriculture. Therefore, several regulations on animal protection have been evolved during the 20th century, but the main aim of these rules has been the protection of humans – especially as consumers of the food of animal origin. In turn, the new Act LVI of 2019 on livestock breeding has rules on the protection of the farmed animals, but the main aim of this Act is to protect the animals as food (meat products).[9]

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[3] Similar limitation can be found in H. Spasowska-Czarny, *Environmental and Legal Conditions of Rare Earth Elements*, "Studia Iuridica Lublinensia" 2020, vol. 29(1), p. 198.

[4] Because of their agricultural significance, the draft animals were considered as *res mancipi* by the Roman law, these were objects whose ownership could be transferred only by *mancipatio*. See A. Földi, G. Hamza, *A római jog története és institúciói*, Budapest 2001, p. 279.

[5] See I. Frank, *A közigazság törvénye Magyarhonban*, Buda 1845, p. 194.

[6] See K. Beliznay [et. al.], *Magyar jogtörténet*, Budapest 1996, p. 70.

[7] See G. Béli, *Magyar jogtörténet. A tradicionális jog*, Budapest–Pécs 2014, p. 130.

[8] See K. Beliznay, *op. cit.*, p. 83.

[9] See Z. Mikó, *Agrár- és vidékfejlesztési igazgatás*, [in:] *Közigazgatási jog. Szakigazgatásaink elmélete és működése*, ed. A. Lapsánszky, Budapest 2020, p. 740.

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A similar issue can be observed in the case of wild animals. As we have mentioned, hunting has been always an important part of Hungarian agriculture and the right to hunt has been traditionally linked to the ownership of given areas. Therefore, the wild animals, their habitat is protected by the Act LV of 1996 on the protection of the wild and on hunting. However, this Act, especially Article 28 of that Act has detailed regulation on the protection of wild, but this protection is mainly the protection of the wild animals as a resource. Especially those wild animals are protected by the Act which can be hunted, and the main aim of this regulation is to maintain the huntable wild stock.

THE EVOLVEMENT: ANIMAL PROTECTION AS PART OF THE ENVIRONMENTAL PROTECTION

As mentioned above, traditionally the administrative animal protection has been based on the protection of animals as a (agricultural) resource and the legal regulation has focused on property issues, as well as on food safety and consumer protection. Thus, human food has been protected by the regulation. The main aim of this traditional regulation was the protection of domesticated animals: these rules applied to pets as well as farmed and huntable wild animals, and the main purpose of these rules was to protect the animals as a resource.

After the Democratic Transition, Article 70/E of the Hungarian Constitution[10] stated that there is a fundamental right to health and to a healthy environment. This was the constitutional background of the 3rd generation's fundamental right on the environment.[11] Therefore, after the major decisions of the newly established Constitutional Court, in 1995 and 1996 the major acts on environmental protection were passed by the Parliament.

As a part of this legislation on environment protection, the Act LIII of 1996 on the protection of nature has been passed. This Act has a different approach and it can be interpreted as another layer of the regulation on animal protection.[12] The purpose of the Act is the protection of the natural environment as a whole, and therefore one of the main aims of the regulation is to maintain and protect biodiversity in Hungary.[13] Therefore, the protection of the wild habitats – and not only the huntable wild but the complete Hungarian fauna – is a crucial element of the

[10] Act XX of 1949 on the Constitution of the Republic of Hungary.

[11] See J. Sári, B. Somody, *Alapjogok. Alkotmánytan II*, Budapest 2008, pp. 189–192.

[12] K.F. Rozsnyai, *Aspekte der Umsetzung der EU-Regelungen auf dem Gebiet des Umweltschutzes in Ungarn*, [in:] *Praxis der Richtlinienumsetzung im Europäischen Verwaltungsverbund*, eds. C. Freankel-Haeberle, J. Socher, K. Sommermann, Berlin 2020, pp. 159–161.

[13] Similar approach has been applied by the Polish legislation, as well. See J. Stelmasiak, *Nature Reserve as a Legal Form of Nature Protection*, "Studia Iuridica lublinensia" 2020, vol. 29(2), p. 166.

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regulation. As it can be seen, the focus of that administrative protection is different. The environmental regulation focuses on biodiversity and on the protection of the natural ecosystem.[14] Therefore, the animals are protected by the Act, but not the individual animal as a living being, but animals as parts of the ecosystem.[15] This protection focuses indirectly on the welfare and well-being of humans, because the animal protection is part of the constitutional protection of a healthy environment and is *conditio sine qua non* for the protection of nature. The new Fundamental Law of Hungary – as it can be seen later – is based on a similar approach, as well.

ANIMAL PROTECTION AS AN OWN VALUE: THE ADMINISTRATIVE ANIMAL PROTECTION

Another layer of animal protection is the administrative animal protection. In 1998 – shortly before the general parliamentary elections, or rather as part of the election campaign – the Parliament adopted the Act on the protection and welfare of animals (Act XXVIII of 1998). However, this Act can be interpreted as a part of the environmental legislation, it focuses on pets, farm animals, and even on the protection of animals for research and experimental purposes, animals for hunting and for entertainment. Therefore, the focus of the regulation is the protection of animals kept by humans. The regulation has – similarly to the formerly mentioned Acts – an administrative approach. The Act defines the general ban of animal cruelty and rules on protecting and promoting the welfare of the animals (e.g., the prohibition of the forced feeding of the animals). The administrative approach can be observed by the analysis of the enforcement of the Act. The consequence and sanction of infringement of the provisions of the Act is an objective nature administrative fine, the so-called animal protection fine. It should be emphasized that the liability is an objective one, the imposition of a fine is justified by solely the fact of the infringement: personal imputability is not required.[16] However, according to the transforming EU regulation, the preamble of the Act, which is not a binding part of the legal norms in the Hungarian legal system, recognizes that "animals are sentient beings that can feel, suffer and rejoice". At the same time, it is emphasized that the protection of animals is a "moral duty of human being". Therefore, animals are not interpreted as beings with their own rights, but as objects of administrative protection.[17]

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[14] See Gy. Bándi, G. Szamek, *Környezetvédelmi igazgatás*, [in:] *Közigazgatási jog…*, pp. 688–690.

[15] See A. Jámbor, *Gondolatok az állatvédelmi törvény fejlesztéséről*, "Iustum Aequum Salutare" 2018, no. 1, p. 196.

[16] See M. Nagy, *Interdiszciplináris mozaikok a közigazgatási jogi felelősség dogmatikájához*, Budapest 2010, pp. 59–60.

[17] See A. Paulovics, *Állatvédelem és EU*, [in:] *Decem anni in Europea Unione*, vol. 4: *Államtudományi tanulmányok*, ed. A. Paulovics, Miskolc 2015, p. 176.

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PENAL LAW AND ANIMAL PROTECTION

It should be noted that there is a long tradition of punishing animal cruelty, but formerly it was a petty offense. Because petty offenses can be interpreted in Hungary as the administrative penal law, the former regulation fitted into the general, administrative approach of animal protection.

That regulation was transformed in 2003. However, there were plans to incorporate animal cruelty as a crime before 2002, but the main reason of the legislation was several animal cruelties which received publicity and society was shocked by them. Therefore, the Act IV of 1978 on the Penal Code (which was in force then) was amended, and animal cruelty became a crime.[18]

However, animal cruelty became a crime and remained a crime during the re-codification of Hungarian penal law in 2012 (Act C of 2012 on Penal Code). It seems that the welfare of vertebrates became an issue, but it is clear that the regulation is consistent with the above-mentioned general administrative approach of animal protection. Animal cruelty (Section 244 of the Penal Code) is considered a crime against the environment and nature. Therefore, the protected legal subject of a criminal offense is in fact the environment. This is related to the institutional protection approach, because not the animal as an individual being is primarily protected, but the animal as part of the ecosystem and the environment. However, animal cruelty may be severely punished, in default up to two years' imprisonment, and in qualified cases even up to three years, but primarily the natural environment of the human beings is protected by this regulation.

As it can be seen, Hungarian legal norms on animal protection are based on an administrative approach which is linked to the protection of a healthy environment as fundamental rights guaranteed by the Hungarian constitutional regulation.

In the last part of the paper, the constitutional nature of animal protection, especially the questions of institutional protection and the questions of legal status of animals are reviewed.

ANIMAL PROTECTION AND THE HUNGARIAN CONSTITUTIONAL REGULATION

What does the regulation on the protection of animals mean with regard to the constitutional status of animals? Could it suggest that animals have rights in terms of having some sort of legal capacity? Could it imply that they have some sort of

[18] See G. Bárándy, *Az állatkínzás jelene és jövője*, "Debrecenei Jogi Műhely" 2010, vol. 8(2), pp. 2–4.

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fundamental rights that guarantee their legal status as subjects, not only objects, of legal regulation?

Considering Article P) of the Hungarian Fundamental Law, we can identify one possible constitutional approach. The constitutional provision is about the protection of "native animal species" as parts of biodiversity. Protecting and maintaining them and preserving them for the future generations is "the obligation of the State and everyone". However, these duties cannot create rights on the other side since protecting species and biodiversity does not reflect individual animals' legal status. Even protecting individual animals, e.g. criminalizing animal cruelty, does not necessarily imply their acknowledgment as subjects, not objects, of the regulation. This kind of regulation can also serve human beings' rights and interests as the ultimate aim. It can be justified from a utilitarian as well as moral viewpoint: humans need animals in order to survive, and they bear moral responsibility for animals' well-being since they are beings capable of feeling, suffering and being happy.

The Hungarian Constitutional Court (HCC), from the very beginning of its activity, linked environmental protection with the human right to life. As the HCC stated in the first decision on abortion, the objective side of the right to life protects human life and living conditions in general.[19] Some years later, in its landmark decision on environmental protection, the HCC reinforced that "the right to a healthy environment is most closely related to the right to life; the right to a healthy environment is, in fact, a part of the objective, institutional aspect of the right to life". The decision refers to the concept of "animals' rights" as an alternative but unnecessary construction to protect the environment, flora and fauna, as humans' living conditions.[20] One's duties imply the rights of the other party; however, the state's duty to environmental protection does not mean the right of animals (or next generations, nature, etc.); in fact, it serves the rights and interests of humans.[21] The Hungarian Act on the Protection of Animals (Act XXVIII of 1998) is based on the same foundations. Its preamble refers to the moral responsibility of humans and the value of animals for humanity.

The protection of animals as part of securing environmental sustainability and humans' living conditions is reflected in the administrative nature of the Hungarian legal regulation according to which animals are the object of administrative and criminal protection. It is a reasonable question whether the protection of animals could be more effective if they were the subjects of the protection, and the protection

[19] Decision 64/1991. (XII. 17) AB (ABH 1991, 297, 303).

[20] Decision 28/1994. (V. 20) AB (ABH 1994, 134, 139). The concept of the right to a healthy environment as independent and self-contained protection of institutions, a distinct fundamental right exceedingly dominated and determined by its objective aspect of institutional protection, was reinforced by the HCC after the entry into force of the Fundamental Law. See Decision 4/2019. (III. 7) AB [72].

[21] See B. Majtényi, *18. §* [*Az egészséges környezethez való jog*], [in:] *Az Alkotmány kommentárja*, ed. A. Jakab, Budapest 2009, pp. 524–526.

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was not only the duty of the state but the right of animals. From this viewpoint, the animals' legal status can be considered an instrument to improve animal protection. According to this approach, recognizing animals as right-holders technically entitles people, as the animals' representatives, to claim the protection, initiate procedures, bring cases before courts, etc., on behalf of animals. However, the ultimate aim of protection remains humans' rights.[22]

A different question is whether the legal regulation reacts appropriately to the fact that animals, especially vertebrates, are capable of feeling, pain or happiness and have interests in good treatment. Should it be reflected by recognizing them as subjects, their genuine legal capacity and rights? Some scholars argue, following Jhering's interest theory, that the animals' legal capacity merely depends on the legal acknowledgment. However, the catalog of animals' rights would differ from that of humans to a great extent, and having rights does not necessarily mean having fundamental rights legal capacity.[23]

CONCLUSION

In Hungary, the legal regulation on animal protection, including the crime of animal cruelty, has an administrative nature. We analyzed the evolution and layers of this regulation from livestock breeding and wild animals and hunting to environmental protection, the Act on the protection and welfare of animals and the criminalization of animal cruelty.

We also raised the question of the legal status of animals behind the laws on their protection. While animals are objects, not subjects of the regulation, the law also acknowledges that they are capable of feeling, of suffering. The administrative nature of regulation reflects the approach according to which animal protection stems from the state's objective – subjectless – duty to protect the environment and humans' living conditions. Its ultimate aim is to protect humans.

[22] Similar instrumental justification can be identified behind the legal capacity of other non-human entities, e.g. organizations. See L. Granyák, *Do Human Rights Belong Exclusively to Humans? The Concept of the Organisation from a Human Rights Perspective*, "ELTE Law Journal" 2019, no. 2, p. 18.

[23] See Z.J. Tóth, *Jogosultság-viszony és jogosultság-alanyok*, [in:] *Jogosultságok – elmélet és gyakorlat*, eds. K. Ficsor, T. Győrfi, M. Szabó, Miskolc 2009, pp. 84–85; B. Majtényi, *Állati jogok kérdése*, [in:] *Emberi jogi enciklopédia*, ed. V. Lamm, Budapest 2018, p. 55.

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ABSTRAKT

Ochrona zwierząt ma długą tradycję w węgierskim systemie prawnym. Można ją interpretować jako model wielopoziomowy, ale podejście do ochrony zwierząt ma charakter głównie administracyjny. Pierwotnie ochrona zwierząt była interpretowana jako ochrona zwierząt hodowlanych traktowanych jako zasoby. Chociaż rozwinęły się nowe poziomy, to jednak podejście rolniczo-administracyjne pozostało. Drugi poziom opiera się na ochronie zdrowia i zdrowej przyrody. Zwierzęta są chronione jako część środowiska naturalnego i ekosystemu, a ich ochrona jest częścią ochrony bioróżnorodności na Węgrzech. Mimo że okrucieństwo wobec zwierząt jest na Węgrzech przestępstwem, to podejście prawa karnego spójne jest z prawem administracyjnym, ponieważ opiera się na instytucjonalnej ochronie podstawowego prawa do zdrowia i zdrowego środowiska. Prawo uznaje, że zwierzęta są zdolne do odczuwania, do cierpienia. Jednakże ochrona zwierząt wynika z przedmiotowego – a nie z podmiotowego – obowiązku ochrony środowiska i warunków życia ludzi przez państwo. Jej nadrzędnym celem jest ochrona ludzi.

Słowa kluczowe: ochrona zwierząt; prawo administracyjne; ochrona bioróżnorodności; prawa do zdrowia i zdrowego środowiska; system prawny; Węgry